

The Honorable John H. Chun

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC., *et al.*

Defendants.

No. 2:23-cv-00932-JHC

DECLARATION OF MARK
ENGLAND IN SUPPORT OF
AMAZON.COM, INC.'S
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL
PRODUCTION OF DOCUMENTS
AND INFORMATION RELATING
TO MAY 6, 2021 MEETING

I, Mark England, declare as follows:

1. I am an attorney for Defendant Amazon, Inc. ("Amazon" or the "Company").

Unless otherwise noted, the matters set forth herein are true and correct to the best of my knowledge. If called as a witness, I could and would testify competently thereto.

2. I submit this declaration in support of Amazon's Opposition to Plaintiff's Motion to Compel. Nothing in this declaration is intended to or should be construed to constitute a waiver of Amazon's attorney-client privilege and work product protection asserted in its privilege logs as to the documents discussed therein.

3. I am Senior Corporate Counsel for Amazon. In that role I advise Amazon on a range of legal issues, including legal issues relating to the Prime sign-up and cancellation processes. I have been employed at the Company since February 2020.

4. Before that, I received a law degree from University College London in 2007.

1 In 2009, I received a postgraduate diploma in Legal Practice from BPP University. I first
2 practiced law as a trainee in 2010, and I was admitted as a solicitor in February 2012.

3 5. I have reviewed the documents that the FTC has moved to compel.

4 **Clarity and FTC Investigation**

5 6. As I detailed in my prior declaration in this case, I have been involved since
6 2021 in the “Clarity” workstreams at Amazon. Declaration of Mark England ¶¶ 6–10 (Dkt. 52)
7 (“England Decl.”). The Clarity workstreams are a series of initiatives focused on improving the
8 Amazon customer experience by soliciting customer feedback and assessing possible changes
9 to the Prime sign-up and cancellation processes.

10 7. Over the last several years, as Amazon has undertaken efforts to evaluate the
11 sign-up and cancellation processes, Company personnel frequently sought my legal advice on
12 possible changes to the processes. I am one of several attorneys who has provided legal advice
13 on these matters. Other attorneys who provided legal advice on these topics include Dan
14 Borden, Marla Dunn, Ben Garry, Susan Kremer, Michael Miller, Karen Ressmeyer, Azalea
15 Park, and Praju Tuladhar.

16 8. On March 16, 2021, the FTC issued a Civil Investigative Demand (“March
17 CID”) asking for information about the Amazon Prime sign-up and cancellation processes.

18 9. I reviewed the March CID after Amazon received it, and I have provided
19 Amazon with legal advice in connection with the FTC’s investigation.

20 **May 6, 2021 Meeting**

21 10. As I also discussed in my prior declaration in this case, in early 2021, prior to
22 Amazon’s receipt of the March CID, the Prime team was considering possible changes to the
23 Prime sign-up and cancellation processes. *Id.* ¶¶ 11–13. The team scheduled a meeting with
24 leaders from Amazon, and that meeting was initially scheduled for before March 16.

25 11. But the meeting was postponed until May 6, 2021 (“May 6 Meeting”), due to
26 scheduling and other considerations. As a result, Amazon received the March CID prior to the
27 meeting.

12. As I attested in my earlier declaration, the Prime team modified the purpose of the May 6 Meeting following the receipt of the March CID. *Id.* ¶ 13. After receiving the investigative demand, the Prime team decided to focus the May 6 Meeting primarily on legal considerations related to the Prime sign-up and cancellation processes. Two other Amazon attorneys, Praju Tuladhar and Michael Miller, and I intended to provide legal advice during the meeting to senior Amazon leaders regarding the processes and potential changes to them. Accordingly, Mr. Tuladhar and I substantially revised the materials that had been prepared for the meeting to incorporate our legal advice. We did so with the understanding that the March CID indicated that the FTC was contemplating bringing suit against Amazon relating to the Prime sign-up and cancellation processes.

13. Most of the documents the FTC has moved to compel relate to the May 6 Meeting.

14. **MTC-2** is a Chime meeting chat. This document is a Chime meeting chat associated with the May 6 Meeting about legal advice regarding the Prime sign-up and cancellation processes and possible adjustments to those processes.

15. **MTC-3** is a document that Mr. Tuladhar and I revised in preparation for the May 6 Meeting. This document incorporates our legal advice concerning possible modifications to the Prime sign-up and cancellation processes. Specifically, this document reflects our legal advice about (1) compliance of the Prime sign-up and cancellation processes with applicable laws and regulatory requirements; and (2) our assessments of potential U.S. and European regulatory enforcement actions. Mr. Tuladhar and I provided this legal advice and analysis so that it could be considered by Amazon leadership in and after the May 6 Meeting, when making any decisions about the Prime processes. In addition, we offered this advice to better prepare the Company for any litigation with the FTC, if it chose to bring an enforcement action. Mr. Tuladhar shared this memorandum with the group in attendance at the May 6 Meeting.

16. **MTC-4** is an addendum to the memorandum just discussed. Mr. Tuladhar

1 shared this addendum with the group attending the May 6 Meeting.

2 17. **MTC-1** is an email containing notes on the May 6 Meeting. The notes reflect
3 the legal advice provided in the meeting, including legal advice relating to potential regulatory
4 actions in both the United States and Europe.

5 18. **MTC-5** is a version of the memorandum prepared for the May 6 Meeting.

6 19. **MTC-6** is an email including me and Mr. Tuladhar relating to preparations for
7 the May 6 Meeting. The emails summarize a meeting that took place on May 4, 2021 during
8 which Mr. Tuladhar and I discussed with the Prime team the document that we had revised for
9 the May 6 Meeting. We held this meeting to share our preliminary legal advice and solicit
10 feedback on the draft document.

11 **Prime Headwinds**

12 20. As I stated in my prior declaration in this case, Amazon uses the term
13 “headwinds” to identify challenges confronting the Company. England Decl. ¶ 24. Regulatory
14 compliance and legal enforcement are frequently considerations Amazon factors in when
15 analyzing business challenges.

16 21. **MTC-9** is a draft document on which Amazon businesspeople were seeking
17 legal advice. The draft document reflects legal advice provided in redline by Mr. Tuladhar
18 regarding the potential for regulatory enforcement actions in both the United States and Europe.
19 The legal advice in this draft document, which was prepared following the March CID, was
20 offered in part to prepare the Company for potential litigation with the FTC.

21 I declare under penalty of perjury under the laws of the United States that the foregoing
22 is true and accurate to the best of my knowledge.

23 DATED this 28th day of January, 2025.

Signed by:

Mark England
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24 By _____

25 Mark England